

IN THE MATTER OF:)
)
APPLICATION FOR) DOCKET NO. 99-AFC-9
CERTIFICATION FOR THE)
WESTERN MIDWAY SUNSET)
COGENERATION COMPANY)
PROJECT)
_____)

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONER

Mr. Robert Pernell, Presiding Member

HEARING OFFICER

Mr. Major Williams

STAFF

Mr. Jack Caswell, Project Manager

Mr. Joseph Loyer, Air Quality

Mr. David Mundstock, Senior Staff Counsel

APPLICANT

Mr. Donald Brookhyser, Esq.

Mr. Ray Smith, Executive Director, Midway Sunset

Mr. Edmond Western, Electrical Engineer, Midway Sunset

Mr. Scott Weaver, WZI

Ms. Mary Jane Wilson, WZI

ALSO PRESENT

Ms. Melissa Adams, (via telephone) San Joaquin Valley
Unified Air Pollution Control District

Mr. Tom Goff, (via telephone) San Joaquin Valley Unified
Air Pollution Control District

PUBLIC ADVISER

Ms. Priscilla Ross

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EXHIBITS

NUMBER	FOR I.D.	IN EVIDENCE
17 Replacement pages for FDOC	5	10
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 COMMISSIONER PERNELL: Let's go on the record.

3 Good morning. My name is Commissioner Pernell. I'm the
4 presiding member of the Western Midway Sunset Cogeneration
5 Project. By way of introduction and the way we will
6 proceed, I will do a brief introduction and turn the
7 proceeding over to our hearing officer Mr. Williams.

8 This is a continuation of a former evidentiary
9 hearing of the Western Midway Sunset Project's application
10 for certification.

11 First, we want to introduce the Committee. And
12 I've introduced myself. My advisor is Ellen
13 Townsend-Smith and our hearing officer is Mr. Major
14 Williams. The second member on the Committee is
15 Commissioner Robert Laurie who is unable to be here this
16 morning.

17 With that, I will turn the proceedings over to
18 our hearing officer, Mr. Williams, who will then outline,
19 introduce the applicants and outline the proceedings for
20 this morning.

21 Mr. Williams.

22 HEARING OFFICER WILLIAMS: Thank you,
23 Commissioner Pernell. I would note for the record that we
24 do have the air district participating by telephone. And
25 on the telephone from the air district is Mr. Tom Goff and

1 Ms. Melinda Adams, is that right, are you there?

2 MR. GOFF: That's correct. And it's Melissa
3 Adams.

4 HEARING OFFICER WILLIAMS: Melissa Adams.

5 MS. ADAMS: Yes. I'm here.

6 HEARING OFFICER WILLIAMS: Thank you. I would --

7 COMMISSIONER PERNELL: Do we have anyone else on
8 the line besides the air district?

9 Okay.

10 HEARING OFFICER WILLIAMS: At this point, I think
11 we would ask the parties to introduce themselves.

12 MR. BROOKHYSER: Good morning, Mr. Williams. I'm
13 Don Brookhyser, counsel for the applicant. With me today
14 on my left are Edmond Western and Raymond Smith from
15 Midway Sunset. And on my right are Mary Jane Wilson and
16 Scott Weaver from WZI Inc., consultants to the applicant.

17 HEARING OFFICER WILLIAMS: Thank you.

18 Staff.

19 SENIOR STAFF COUNSEL MUNDSTOCK: David Mundstock,
20 attorney for the California Energy Commission Staff.

21 PROJECT MANAGER CASWELL: And Jack Caswell,
22 Project Manager, for the California Energy Commission.

23 HEARING OFFICER WILLIAMS: I would also note that
24 Mr. Loyer is in the room as well.

25 MR. LOYER: Air Quality staff.

1 HEARING OFFICER WILLIAMS: Thank you. And
2 also --

3 MS. ROSS: Priscilla Ross from the Public
4 Adviser's Office present.

5 HEARING OFFICER WILLIAMS: Sir, you are?

6 MR. SMITH: Ray Smith.

7 HEARING OFFICER WILLIAMS: You're --

8 MR. SMITH: Midway Sunset.

9 HEARING OFFICER WILLIAMS: Midway Sunset. Thank
10 you.

11 I think we have identified all the parties in the
12 room. I don't think I've left anybody out.

13 The purpose of evidentiary hearings is to receive
14 evidence including sworn testimony in order to establish
15 the factual record necessary to reach a decision on the
16 AFC. Evidentiary hearings are formal in nature.
17 Witnesses will testify under oath or affirmation and are
18 subject to cross examination. The reporter will
19 administer the oath.

20 We specifically continued our prior hearing on
21 December 13th, 2000 until today so that the parties would
22 have an opportunity to review the air district's Final
23 Determination Of Compliance, the FDOC. The complete FDOC
24 with appendices was docketed with the Energy Commission on
25 December 19th, 2000.

1 The Committee will substitute the FDOC that was
2 docketed on December 19, 2000 as Exhibit 17 in place of
3 the document that was received at the hearing on December
4 13th, that I understand did not contain the appendices.

5 A party sponsoring a witness will establish the
6 witness's qualifications and ask the witness to summarize
7 his or her testimony. Multiple witnesses may testify as a
8 panel as necessary. The Committee may also question
9 witnesses.

10 Upon conclusion of the air quality presentation,
11 members of the public may offer unsworn public comment.
12 However, I would note that there are no public members
13 present at this point; is that correct, Ms. Ross?

14 PUBLIC ADVISER ROSS: None.

15 HEARING OFFICER WILLIAMS: Public comment is not
16 testimony but may be used to explain evidence in the
17 record. We will begin with the Applicant's presentation,
18 which is to be followed by staff who will sponsor the
19 district's presentation, and finally any public comment.

20 Before we do that, however, we need to go over a
21 few housekeeping matters. The Committee has distributed
22 an updated exhibit list. There are several matters of
23 which the Committee would like to receive clarification.

24 First, as I noted, the Committee will substitute
25 the District's FDOC dated December 19th together with the

1 air district's replacement pages for the FDOC dated
2 January 5th, 2001 as Exhibit 17 for identification.

3 Does any party have a problem with that?

4 MR. BROOKHYSER: No, applicant does not.

5 SENIOR STAFF COUNSEL MUNDSTOCK: No.

6 HEARING OFFICER WILLIAMS: Okay. So that will be
7 17 for identification.

8 (Thereupon the above-referenced document
9 was marked as Exhibit 17 for identification.)

10 HEARING OFFICER WILLIAMS: Also, the Committee
11 has received a letter dated January 4th, 2001 from the
12 CalISO to applicant regarding the detailed facilities
13 study, and CalISO's final approval of the Midway Sunset
14 Power Project.

15 If there is no objection, the Committee will
16 admit that document as Exhibit 20.

17 MR. BROOKHYSER: No objection.

18 SENIOR STAFF COUNSEL MUNDSTOCK: No objection.

19 HEARING OFFICER WILLIAMS: That document then is
20 admitted.

21 (Thereupon the above-referenced document was
22 marked for identification and admitted into
23 evidence as Exhibit 20.)

24 HEARING OFFICER WILLIAMS: Is there any other
25 documentary evidence that the parties wish to offer at

1 this time?

2 SENIOR STAFF COUNSEL MUNDSTOCK: You have the
3 staff errata from Joseph Loyer, which actually replaces
4 Exhibit 16A. You can give it the same number or a new
5 number. But what was presented as 16A is no longer part
6 of the staff case.

7 HEARING OFFICER WILLIAMS: Okay. Why don't we
8 just keep it as 16A and replace it with the prior.

9 COMMISSIONER PERNELL: So 16A is going to be
10 replaced with staff errata?

11 HEARING OFFICER WILLIAMS: A later version dated
12 January 9th. Just a later version. The old 16A was dated
13 December 13th, and we'll replace that one 16A with the
14 errata dated January 9th.

15 HEARING OFFICER WILLIAMS: Is there any other
16 documentary evidence that we can handle at this time?

17 MR. BROOKHYSER: Not on behalf of the applicant.

18 HEARING OFFICER WILLIAMS: Staff?

19 SENIOR STAFF COUNSEL MUNDSTOCK: Nothing
20 additional.

21 HEARING OFFICER WILLIAMS: Okay. So at this
22 point, I think we can close the record as to the topics
23 that we have covered thus far subject to supplementing the
24 record when various documents from other agencies that we
25 expect come in. So if there's no objection, we'll do

1 that.

2 MR. BROOKHYSER: No objection.

3 SENIOR STAFF COUNSEL MUNDSTOCK: No objection.

4 HEARING OFFICER WILLIAMS: The record then is
5 closed as to all matters except for air quality.

6 Okay. Then I think we can proceed with the
7 applicant and its air quality presentation.

8 MR. BROOKHYSER: Thank you. Our only witness in
9 the air quality area is Scott Weaver. Pursuant to our
10 prior understanding, our agreement that testimony can be
11 received by declaration, his testimony has already been
12 delivered to the Commission.

13 Let me indicate that in the written testimony,
14 Mr. Weaver testifies that he's reviewed the application,
15 is familiar with it, that he helped develop the
16 application, and that the application together with the
17 data responses and subject to the conditions of compliance
18 stated in the final staff assessment, will meet all laws,
19 ordinances, statutes and regulations with regards to air
20 quality, and, in particular, will not have a significant
21 adverse effect on air quality.

22 HEARING OFFICER WILLIAMS: Thank you. Did the
23 district -- are you still there, can you hear okay?

24 MR. GOFF: Yes, we can hear just fine. Thank
25 you.

1 HEARING OFFICER WILLIAMS: Okay. Then we'll
2 proceed with staff and its presentation.

3 SENIOR STAFF COUNSEL MUNDSTOCK: Okay. The staff
4 would like, again by declaration, the testimony of Joseph
5 Loyer on air quality to be introduced into evidence
6 including Exhibit 16A, the errata dated January 9th, which
7 follows Mr. Loyer's review of the final Determination Of
8 Compliance submitted by the air district and docketed
9 December 19th.

10 HEARING OFFICER WILLIAMS: Thank you. You may
11 proceed.

12 SENIOR STAFF COUNSEL MUNDSTOCK: We simply offer
13 it into evidence by declaration.

14 HEARING OFFICER WILLIAMS: Okay.

15 SENIOR STAFF COUNSEL MUNDSTOCK: There is, as far
16 as I understand, no current request to cross examine Mr.
17 Loyer, so the testimony can be accepted on the same basis
18 as all the previous staff witnesses by declaration.

19 HEARING OFFICER WILLIAMS: Is there any
20 objection?

21 MR. BROOKHYSER: No, that's correct.

22 HEARING OFFICER WILLIAMS: So admitted.

23 Then I also understand that staff will be
24 sponsoring the FDOC.

25 SENIOR STAFF COUNSEL MUNDSTOCK: We can do that

1 very briefly with the air district.

2 The Energy Commission's regulations specify that
3 the air district, under Section 1744.5 is to make a
4 determination of compliance regarding whether the project
5 meets the requirements of applicable new source review and
6 all other applicable district regulations. And I just
7 wish to ask the air district witnesses if they have made
8 that determination in their Final DOC?

9 MR. GOFF: Yes, we have.

10 SENIOR STAFF COUNSEL MUNDSTOCK: And is the
11 determination in the affirmative that there is
12 compliance with --

13 HEARING OFFICER WILLIAMS: Excuse me. I'm sorry.
14 Before you proceed with questioning, I think we ought to
15 swear the air district witnesses and have the court
16 reporter do that over the telephone.

17 (Thereupon Mr. Tom Goff and Ms. Melissa Adams
18 were sworn, by the court reporter, to tell the
19 truth, the whole truth and nothing but
20 the truth.)

21 MR. GOFF: I do.

22 MS. ADAMS: I do.

23 HEARING OFFICER WILLIAMS: I'm sorry. Mr.
24 Mundstock, could you resubmit your question.

25 SENIOR STAFF COUNSEL MUNDSTOCK: My question is

1 whether in your determination of compliance, filed
2 December 19th, 2000, you concluded that the proposed
3 Midway Sunset facility meets the requirements of the
4 District's New Source Review Rule and all other applicable
5 district regulations?

6 MR. GOFF: Yes, we did.

7 SENIOR STAFF COUNSEL MUNDSTOCK: Thank you. I
8 think that fulfills the requirements of Section 1744.5.

9 HEARING OFFICER WILLIAMS: And with that, would
10 you offer up the --

11 SENIOR STAFF COUNSEL MUNDSTOCK: Offer the DOC
12 into evidence.

13 HEARING OFFICER WILLIAMS: And that would also
14 include the --

15 SENIOR STAFF COUNSEL MUNDSTOCK: All errata the
16 district has supplied.

17 HEARING OFFICER WILLIAMS: Any objection?

18 MR. BROOKHYSER: No objection.

19 HEARING OFFICER WILLIAMS: Okay. Then the FDOC
20 and the replacement pages are admitted as Exhibit 17.

21 (Thereupon Exhibit 17 was admitted into
22 evidence.)

23 HEARING OFFICER WILLIAMS: I think then that in
24 terms of our schedule, our latest schedule for this
25 proceeding, it is the Committee's intent to have a PMPD

1 available in early February. In which case, inclusive of
2 the 30-day comment period, the Midway Sunset Commission
3 decision is now contemplated as an agenda item for the
4 March 7th business meeting.

5 Do the parties wish to offer anything further?

6 MR. BROOKHYSER: Not on behalf of the applicant.

7 SENIOR STAFF COUNSEL MUNDSTOCK: Nothing further
8 from staff.

9 HEARING OFFICER WILLIAMS: Commissioner Pernell?

10 COMMISSIONER PERNELL: I have nothing on this
11 proceeding other than to thank you, Mr. Williams and the
12 applicant, certainly staff and the air district. I think
13 that if there's nothing else to come before these
14 proceedings, I think that we're concluded.

15 As Mr. Williams has said, we intend to have this
16 before the business meeting on March 7th for a final from
17 the Commission. We don't anticipate any delays. I
18 certainly hope not. And we will go forward.

19 I just wanted to make a personal comment in that
20 it was a pleasure working with everyone involved in this
21 case. This case, I think, went very smoothly. We gave
22 opportunity for the community to respond. And so it was a
23 very open process. And I thank you all for that.

24 And that's all I have, and we should adjourn
25 these proceedings.

1 HEARING OFFICER WILLIAMS: Thank you.

2 COMMISSIONER PERNELL: We're off the record.

3 (Thereupon the hearing adjourned at 9:20 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Energy Commission evidentiary hearing
7 was reported in shorthand by me, James F. Peters, a
8 Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 11th day of January, 2001.

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23 JAMES F. PETERS, CSR, RPR

24 Certified Shorthand Reporter

25 License No. 10063